



July 17, 2005

VIA FAX TRANSMISSION

(615) 741-5015

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TN REGULATORY AUTHORITY  
DOCKET ROOM

Chairman Pat Miller  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: **Docket# 05-00152** United Telephone – Southeast  
Petition for Declaratory Ruling  
**Docket# 05-00156** The Information Bureau, Inc. (dba TIB)  
TIB's Request for a PUC Directive

Honorable Chairman Pat Miller:

This is a modified response to the above two dockets. Here are some pertinent dates:

On July 11, 2005, the TRA discussed these two dockets. TIB was advised that the commissioners would appoint a referee to handle them. This filing is an updated filing and replaces the response filed by TIB on July 11, 2005.

On May 22, 2005, TIB filed a "Request for a PUC Directive" and was assigned Docket# 05-00156. A copy of the petition was faxed to Sprint.

On May 26, 2005, Sprint filed a "Petition for Declaratory Ruling" and was assigned Docket# 05-00152.

On June 16, 2005, Sprint asked the TRA to combine both of these Dockets because they relate to the same dispute.

### Background

The origin of this dispute arises from an FCC ruling commonly known as the "Triennial Review Order ("TRO"). The entire order is beyond the scope of this write up, but to summarize: in April 2004, the FCC ruled that ILECs do not need to provide UPE-P products to CLECs.

### TIB is:

SBA certified Small Business (8a)  
Minority Owned Business  
Small Disadvantaged Business  
HUB ZONE Certified

GSA Contract No:  
GS35F0375M

DoD Cage Code:  
IKCW8



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The original FCC order was challenged in the United States Court of Appeals, Washington DC, and was reversed. Subsequently a total of three orders were issued by the FCC and all of them were reversed by the same court. In March 2005, the FCC issued another order and it is again being challenged in court. From the previous FCC orders and their reversal by the courts, it is very much possible that the court may reverse the current FCC order again.

In its last order, the FCC directed ILECs to continue offering UNE-P products for one year at a rate of \$1 above the contractual rate between the ILEC & CLEC.

After the FCC issued its first order in April 2004, Sprint increased their UNE-P lines charges by 70%, even though the FCC order was reversed by the court, Sprint has continued to bill TIB at the higher rate. TIB is a small 8A business, located in a Hub Zone, and cannot afford such price changes. If Sprint is allowed to charge such high rates for UNE-P lines, then small companies like TIB will go out of business.

#### **What Sprint is asking the TRA**

Sprint says that the current FCC order only applies to Voice UNE-P and does not apply to Data UNE-P. When TIB called both the FCC & TRA (TN) offices, it was told that the FCC has made no such distinction. FCC attorney's told TIB that the FCC rules are issued in its totality and the reversal by the court is also in totality. In this case, the courts have never issued an order indicating that they accept one part of the FCC ruling and do not accept another part. Furthermore, the FCC attorneys told TIB that since the matter is with the courts again, the FCC will wait for a court decision before implementing the order. They also indicated that it is up to individual state PUC's to make their own decision whether or not to implement the FCC order or wait for the final decision of the courts.

Sprint is asking TRA to disregard the pending legal appeal in the United States Court of Appeals and immediately implement the FCC ruling. This request is very similar to asking a jailer to proceed with an execution before the appeal process is complete.

#### **What TIB is requesting from the TRA**

The ruling in this matter could mean continuing to do business or going out of business for a small company like TIB; therefore, TIB is requesting that the TRA delay implementation of the current FCC order until the District Court, Washington DC, gives a final ruling. It is very much possible that the final FCC ruling and subsequent acceptance by the court may be a ruling that is very different than the current one presented by the FCC.

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Another option for the TRA would be to direct that a small premium be added to the monthly UNE-P billing until the courts decide this matter. FCC has directed that such a premium be \$1 per month. Some CLECs have suggested (and ILECs have agreed to) a premium of 15% of the monthly billing.

If, after the final order by the FCC an ILEC or CLEC owes money to the other, then the debt can be satisfied at that time.

### **Final Summary**

A decision to allow ILECs to charge whatever they want, is detrimental to a small CLEC like TIB and will force them to go out of business. It will reduce business competition and increase prices for consumers.

On the other hand the TRA-PUC has the authority to direct both ILECs & CLECs to continue UNE-P rates at (1) the current contractual agreement, (2) at the current contractual agreement plus a \$1 per month premium as directed by the current FCC order, or (3) set a small monthly premium (such as 15% of monthly billing) until a final decision is made by the FCC & approved by the courts.

Any one of these decisions by the TRA are a WIN-WIN decision because they would allow small CLECs to still continue operating and ILECs to still continue to receive revenue for their UNE-P lines.

Please do not hesitate to contact me if you have any questions.

Sincerely Yours,

Kirti S. Bajwa

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1KCW8